

NORMAN E. MARKER

IBLA 75-337

Decided July 15, 1975

Appeal from decision of the Utah State Office, Bureau of Land Management, denying reinstatement of oil and gas lease U-9529-Q, terminated by operation of law for a failure to pay annual rental on or prior to the due date.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Appellant's misinterpretation of the due date on the courtesy notice does not justify his late payment of the rent.

APPEARANCES: Michael M. Marker, as conservator of the Estate of Norman E. Marker.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This is an appeal from a decision of the Utah State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease U-9529-Q, terminated by operation of law for failure to make timely payment of the rent as provided in 30 U.S.C. § 188(b) (1970) and 43 CFR 3108.2-1(c)(2). Michael M. Marker is conservator of the Estate of Norman E. Marker, the lessee, who has been missing since October 20, 1972.

The anniversary date of the lease was October 1, 1974. The rental payment arrived at the State Office on October 9, in an envelope bearing an October 4 postmark. Failure to mail the payment "sufficiently in advance of the anniversary date to account for normal delays \* \* \*" normally constitutes a lack of reasonable diligence. 43 CFR 3108.2-1(c)(2).

In his statement of reasons, the appellant asserts that he had no knowledge that the rental payment was due except from the courtesy notice sent by the State Office, and because of a faulty copy in which the comma separating "OCT 1" from "74" appeared to be elevated, the due date on the notice could be misread as "OCT 1974" instead of "OCT 1,74".

It is apparent that the rent had been paid in a timely manner before the previous anniversary date of October 1, 1973, even though the lessee had been missing for almost a year. The long period which has elapsed since the lessee was missing should have provided adequate time for the appellant to acquaint himself with the lessee's assets and obligations.

The Department has no obligation to send a courtesy notice and failure to receive such notice does not justify late payment of the rent. Louis J. Patla, 10 IBLA 127 (1973). We do not read the notice as appellant did. In any event, however, the alleged mistake in the due date is not of such a character that would induce the lessee to believe that the due date had been extended. The appellant's delayed payment of rent because of his misinterpretation of the due date falls within the area of inadvertence or negligence which we have previously held does not constitute justifiable delay. A. O. Holley, 14 IBLA 264 (1974); Louis Samuel, 8 IBLA 268 (1972).

[1] An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only on a showing that failure to pay on or before the anniversary date was either justifiable or not due to lack of reasonable diligence. Appellant's misinterpretation of the due date on the courtesy notice does not justify his late payment of the rent.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

